

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**Richard Lupardus, on Behalf of Himself
And on Behalf of All Others Similarly
Situated,**

Plaintiff,

v.

Civil Action No. 2:19-cv-00529

Elk Energy Services, LLC,

Defendant.

DECLARATION OF JOHN NEUMAN

The Undersigned declares as follows:

1. My name is John Neuman. I am over the age of twenty-one years of age, of sound mind, and competent to make this declaration. I swear under penalty of perjury that the facts stated within this declaration are true and correct.
2. I am the attorney in charge of the Plaintiffs in this action. The Court has requested that we provide an itemization of the attorneys' fees accrued in this action and to identify which time entries are attributable to time spent on the individuals that Plaintiff dismissed from this action. Our fee report is attached.
3. On that fee report, there are three billers identified. JN is myself, John Neuman. BSM is my law partner Beatriz Sosa-Morris. PARA represents legal assistant time. This report is redacted to protect attorney-client communications, namely the identity of the individual our firm communicated with and the subject matter of that communication.
4. I have highlighted the line items which I believe are attributable to work spent exclusively on the claims of the individuals we dismissed from this action. The total of this time equals 11 hours for a total of \$2,100.

5. The time attributable solely to the dismissed claimants from the fee report is represented by the following table:

Entry #	Date	Biller	Rate	Time	Amount	Description
109	1/21/2021	JN	\$350	0.2	\$ 70.00	Email with Defendant re: plaintiffs without any FLSA damages
110	2/11/2021	JN	\$350	0.6	\$ 210.00	Draft dismissal stipulation for plaintiffs that do not have damages
112	2/16/2021	JN	\$350	0.1	\$ 35.00	Email with defendant regarding dismissal stipulation
113	2/17/2021	BSM	\$350	0.1	\$ 35.00	review need for turnback letters to clients who do not have FLSA claims
116	2/19/2021	JN	\$350	0.3	\$ 105.00	Review court's order denying dismissal
117	2/19/2021	BSM	\$350	0.1	\$ 35.00	review denial of dismissal stip
118	2/19/2021	BSM	\$350	0.5	\$ 175.00	discussed denial of dismissal with JN, research issue of partial dismissal in collective actions
120	3/3/2021	JN	\$350	2.2	\$ 770.00	Research Wva cases on FLSA settlement approval, draft motion and memo in support of dismissing non damage plaintiffs
123	3/17/2021	JN	\$350	0.2	\$ 70.00	Email with defendant re copy of motion to dismiss non damage plaintiffs
131	6/25/2021	JN	\$350	0.4	\$ 140.00	Review order from Court re additional information needed on fees
132	6/28/2021	JN	350	1.3	\$ 455.00	Draft declaration in support of settlement approval, review fee report

6. There is additional work reflected in the fee report that concerns work on the claims of the settlement Plaintiffs and the dismissed Plaintiffs that cannot be divided. Specifically, time entry numbers 106 and 107 reflect time spent analyzing the records Defendant produced and calculating the damages we believe each Plaintiff is owed. This entailed examining the pay and time records for each Plaintiff on a week by week basis using time sheets and

payroll records produced by the Defendant. Both the settlement Plaintiffs and the dismissed Plaintiffs had their records analyzed in this same process. Through this process it was determined that the dismissed Plaintiffs were paid in a different manner than the settlement Plaintiffs. It was also determined that the dismissed Plaintiffs worked subsequent to the pay policies that gave rise to this lawsuit. Given that these time entries benefited the Plaintiffs that will receive compensation under the settlement, we respectfully request that the Court not reduce the time attributable to these tasks.

7. I believe that the remainder of the time our firm spent on this case is accurately attributable to the claims of the Plaintiffs that will receive compensation as a result of this settlement. That work includes legal research, drafting the complaint, litigating the motion for conditional certification, providing notice, negotiating the settlement, and drafting the release paperwork.

Signed on June 29, 2021.

/s/ John Neuman
John Neuman

Entry #	Date	Billor	Rate	Time	Amount	Description
1	7/1/2019	JN	\$ 350.00	2	\$ 700.00	██████████, research company, search for previous case filed against Elk Energy
2	7/3/2019	JN	\$ 350.00	1.3	\$ 455.00	██████████ ██████████, research venue
3	7/11/2019	BSM	\$ 350.00	1.6	\$ 560.00	research/reviewed state wage law for potential violations; reviewed new federal case laws re: FLSA in West Virginia
4	7/11/2019	JN	\$ 350.00	1	\$ 350.00	Phone call with local counsel re venue issues, draft local counsel agreement
5	7/17/2019	JN	\$ 350.00	1.4	\$ 490.00	Draft/revise original complaint, send same to local counsel for filing
6	7/19/2019	JN	\$ 350.00	0.3	\$ 105.00	Communicate with process server re service of process
7	7/25/2019	JN	\$ 350.00	0.3	\$ 105.00	Draft PHV motion
8	7/26/2019	JN	\$ 350.00	0.5	\$ 175.00	Draft statement of visiting attorney for WV state bar
9	7/26/2019	BSM	\$ 350.00	0.1	\$ 35.00	review charges for pro hac fee to state bar; 358.00
10	8/28/2019	JN	\$ 350.00	0.8	\$ 280.00	Review answer and affirmative defenses, research into defendant's counsel
11	8/29/2019	JN	\$ 350.00	0.2	\$ 70.00	Review order and notice, calendar deadlines
12	9/25/2019	JN	\$ 350.00	0.5	\$ 175.00	Draft planning conference meeting
13	9/26/2019	JN	\$ 350.00	1.2	\$ 420.00	Prepare for and attend Rule 26 planning meeting
14	10/16/2019	JN	\$ 350.00	2.5	\$ 875.00	Review defendant's settlement offer letter and records produced with it, create damage model for Plaintiff
15	10/18/2019	JN	\$ 350.00	1.8	\$ 630.00	Draft ROGS, RFAs, RFPs to Elk
16	10/21/2019	JN	\$ 350.00	0.1	\$ 35.00	Serve initial discovery
17	10/21/2019	JN	\$ 350.00	0.4	\$ 140.00	Review discovery served by Defendant
18	10/21/2019	BSM	\$ 350.00	0.4	\$ 140.00	reviewed discovery served by D; saved in file
19	10/28/2019	JN	\$ 350.00	0.5	\$ 175.00	Draft initial disclosures
20	10/28/2019	JN	\$ 350.00	1.3	\$ 455.00	Review docket in Acosta v. TEAM Environmental, download all briefs and orders

Entry #	Date	Billor	Rate	Time	Amount	Description
21	10/29/2019	BSM	\$ 350.00	0.5	\$ 175.00	review defendant's payment system, calculate damage scenarios
22	10/31/2019	JN	\$ 350.00	0.1	\$ 35.00	Review defendant's initial disclosures
23	11/4/2019	BSM	\$ 350.00	0.2	\$ 70.00	went over discovery responses with paralegal HS
24	1/17/2020	BSM	\$ 350.00	0.5	\$ 175.00	went over discovery responses with paralegal HS
25	1/17/2020	PARA	\$ 125.00	1.5	\$ 187.50	draft/revise discovery responses; spoke to [REDACTED]
26	1/21/2020	JN	\$ 350.00	0.3	\$ 105.00	Review documents sent by client
27	1/21/2020	JN	\$ 350.00	3	\$ 1,050.00	Draft responses to Defendant's RFPs and ROGs, bates label and produce responsive documents
28	1/21/2020	BSM	\$ 350.00	1	\$ 350.00	review/revise draft responses to D (RFP, ROG)
29	1/21/2020	BSM	\$ 350.00	0.1	\$ 35.00	sent discovery responses to Defense counsel
30	1/24/2020	JN	\$ 350.00	0.7	\$ 245.00	Review Defendant's discovery responses
31	1/28/2020	JN	\$ 350.00	1.1	\$ 385.00	Research into other conditional certification orders issued by our Court
32	1/29/2020	JN	\$ 350.00	6.5	\$ 2,275.00	Draft motion for conditional certification
33	1/30/2020	JN	\$ 350.00	4	\$ 1,400.00	Further work on motion for conditional certification, draft notice of rights
34	2/3/2020	BSM	\$ 350.00	1.75	\$ 612.50	draft/revise Declaration for Cond. Cert; Cond. Cert. Mtn.
35	2/3/2020	BSM	\$ 350.00	0.7	\$ 245.00	draft Notice of rights
36	2/3/2020	BSM	\$ 350.00	0.3	\$ 105.00	draft Proposed Order for Cond. Cert. Mtn.
37	2/3/2020	JN	\$ 350.00	1.2	\$ 420.00	Phone call with [REDACTED] [REDACTED] [REDACTED]
38	2/4/2020	JN	\$ 350.00	3.5	\$ 1,225.00	Finalize and file conditional certification motion
39	2/18/2020	JN	\$ 350.00	1.5	\$ 525.00	Review Defendant's conditional certification response brief
40	2/19/2020	BSM	\$ 350.00	1.2	\$ 420.00	review documents provided by client including employee pay package worksheet

Entry #	Date	Billor	Rate	Time	Amount	Description
41	2/21/2020	JN	\$ 350.00	6	\$ 2,100.00	Draft conditional certification reply brief
42	2/21/2020	BSM	\$ 350.00	0.9	\$ 315.00	review/revise cond. cert. reply brief
43	2/24/2020	JN	\$ 350.00	3	\$ 1,050.00	Further work on conditional certification reply brief
44	2/28/2020	PARA	\$ 350.00	0.2	\$ 70.00	draft letter to opposing counsel with discovery production documents
45	3/5/2020	JN	\$ 350.00	0.4	\$ 140.00	Review Defendant's discovery dispute letter
46	3/5/2020	BSM	\$ 350.00	2.6	\$ 910.00	review D's discovery dispute letter; research discovery orders in West Virginia Federal Court
47	3/5/2020	BSM	\$ 350.00	0.2	\$ 70.00	requested extension to respond to D's discovery dispute letter from D (Joseph Leonoro)
48	3/27/2020	JN	\$ 350.00	1.5	\$ 525.00	Draft supplemental Rule 26 disclosures, create and produce damage model
49	3/27/2020	BSM	\$ 350.00	0.2	\$ 70.00	draft/revise first supplemental disclosures
50	3/28/2020	BSM	\$ 350.00	0.2	\$ 70.00	draft email to [REDACTED]
51	4/15/2020	BSM	\$ 350.00	0.5	\$ 175.00	meeting with JN re: case status; deadlines; case strategy
52	4/15/2020	JN	\$ 350.00	0.8	\$ 280.00	Draft motion to stay case and memo in support
53	4/17/2020	JN	\$ 350.00	0.3	\$ 105.00	Emails with defendant regarding motion to stay pending cert motion
54	5/14/2020	JN	\$ 350.00	0.4	\$ 140.00	Review order extending deadlines, calendar new deadlines
55	5/14/2020	BSM	\$ 350.00	0.3	\$ 105.00	review Order granting Motion to stay case and continue deadlines;
56	7/20/2020	JN	\$ 350.00	0.1	\$ 35.00	Email with defendant re moving deadlines while cert motion is pending
57	7/22/2020	JN	\$ 350.00	0.3	\$ 105.00	Draft motion to extend deadlines and memo in support
58	7/28/2020	JN	\$ 350.00	1	\$ 350.00	Review order granting certification
59	8/4/2020	JN	\$ 350.00	0.8	\$ 280.00	Revise notice of rights

Entry #	Date	Billor	Rate	Time	Amount	Description
60	8/7/2020	JN	\$ 350.00	0.5	\$ 175.00	Draft Plaintiff's submission of conditional cert notice materials and notice plan
61	8/11/2020	JN	\$ 350.00	0.2	\$ 70.00	Review new DCO and calendar deadlines
62	8/11/2020	JN	\$ 350.00	0.3	\$ 105.00	Email with defendant regarding sending class list and issues with notice plan
63	8/17/2020	JN	\$ 350.00	1.5	\$ 525.00	Review class list from defendant, convert class list into useable format, send to NCOA vendor
64	8/17/2020	BSM	\$ 350.00	0.2	\$ 70.00	review class list from Defendant
65	8/18/2020	JN	\$ 350.00	0.2	\$ 70.00	Email with Defendant re issue of posting notice online
66	8/20/2020	JN	\$ 350.00	0.5	\$ 175.00	Finalize notice of rights and consent
67	8/20/2020	BSM	\$ 350.00	1.5	\$ 525.00	create webpage for notice of rights
68	8/20/2020	JN	\$ 350.00	0.4	\$ 140.00	Emails with Defendant re contents of conditional cert notice
69	8/24/2020	JN	\$ 350.00	0.2	\$ 70.00	Draft motion for approval of notice documents
70	8/30/2020	BSM	\$ 350.00	0.1	\$ 35.00	review email from [REDACTED]
71	8/30/2020	PARA	\$ 125.00	8	\$ 1,000.00	Print notices, package and mail notices
72	8/31/2020	BSM	\$ 350.00	0.7	\$ 245.00	sent email notice to opt in plaintiffs
73	9/1/2020	BSM	\$ 350.00	0.2	\$ 70.00	review email from [REDACTED]
74	9/4/2020	JN	\$ 350.00	0.4	\$ 140.00	Draft notice of filing, redact consent forms
75	9/8/2020	BSM	\$ 350.00	0.1	\$ 35.00	review email from [REDACTED]
76	9/11/2020	JN	\$ 350.00	0.5	\$ 175.00	Draft and file notice of filing, redact consent forms
77	9/25/2020	JN	\$ 350.00	0.5	\$ 175.00	Draft and file notice of filing, redact consent forms
78	9/30/2020	BSM	\$ 350.00	0.2	\$ 70.00	went over reminder notice with Paralegal Ana
79	9/30/2020	PARA	\$ 125.00	8	\$ 1,000.00	sent reminder notice and text message notice
80	10/6/2020	PARA	\$ 125.00	0.2	\$ 25.00	call [REDACTED]

Entry #	Date	Billor	Rate	Time	Amount	Description
81	10/6/2020	BSM	\$ 350.00	0.1	\$ 35.00	review [REDACTED] [REDACTED]
82	10/8/2020	JN	\$ 350.00	0.1	\$ 35.00	Email with defendant re needing to move deadlines
83	10/9/2020	JN	\$ 350.00	0.5	\$ 175.00	File notice of filing consents
84	10/20/2020	BSM	\$ 350.00	1.5	\$ 525.00	Draft Motion to Extend deadlines for new deadlines following notice period
85	10/21/2020	BSM	\$ 350.00	0.4	\$ 140.00	Review new DCO and put all deadlines on calendar
86	10/21/2020	PARA	\$ 125.00	1	\$ 125.00	Scan and save 470 pages of discovery
87	10/21/2020	BSM	\$ 350.00	1.7	\$ 595.00	Review discovery served by Defendant on all the opt-ins, research circuit cases on limiting discovery to opt-in plaintiffs, email Defendant re need to come up with a discovery plan
88	10/21/2020	PARA	\$ 125.00	0.5	\$ 62.50	calendar new deadlines
89	10/26/2020	BSM	\$ 350.00	0.5	\$ 175.00	discussed with paralegal the close of the opt-in deadline and review of any returned mailing/notices
90	10/26/2020	JN	\$ 350.00	0.1	\$ 35.00	email correspondence [REDACTED] [REDACTED]
91	10/28/2020	BSM	\$ 350.00	0.6	\$ 210.00	Review voluminous records provided [REDACTED]
92	10/28/2020	BSM	\$ 350.00	0.5	\$ 175.00	correspondence with [REDACTED] [REDACTED]
93	10/29/2020	BSM	\$ 350.00	0.4	\$ 140.00	Draft notice of filing consent forms
94	10/29/2020	BSM	\$ 350.00	1.4	\$ 490.00	Multiple emails and phone call with [REDACTED] [REDACTED]
95	10/29/2020	PARA	\$ 125.00	1	\$ 125.00	Updated client contact spreadsheet
96	10/30/2020	BSM	\$ 350.00	0.3	\$ 105.00	Draft notice of filing consent forms
97	11/2/2020	BSM	\$ 350.00	1.3	\$ 455.00	Multiple emails and phone call with [REDACTED] [REDACTED]
98	11/13/2020	JN	\$ 350.00	0.5	\$ 175.00	Phone call with [REDACTED] [REDACTED]

Entry #	Date	Billor	Rate	Time	Amount	Description
99	11/16/2020	BSM	\$ 350.00	0.2	\$ 70.00	interview [REDACTED] [REDACTED]
100	11/23/2020	JN	\$ 350.00	0.1	\$ 35.00	Email with defendant re setting up call
101	11/25/2020	JN	\$ 350.00	0.4	\$ 140.00	Prep for and attend status conference call with defendant
102	12/15/2020	JN	\$ 350.00	0.1	\$ 35.00	Email to defendant re status of record production
103	12/28/2020	JN	\$ 350.00	0.3	\$ 105.00	Received letter from Defendant with records for opt-in Plaintiffs
104	12/30/2020	JN	\$ 350.00	0.1	\$ 35.00	Email to defendant re missing records from initial production
105	1/11/2021	BSM	\$ 350.00	0.2	\$ 70.00	email correspondence from client [REDACTED] [REDACTED]
106	1/13/2021	JN	\$ 350.00	6	\$ 2,100.00	Work on damage model for opt-in Plaintiffs
107	1/14/2021	JN	\$ 350.00	3.4	\$ 1,190.00	Work on damage model for opt-in Plaintiffs
108	1/18/2021	JN	\$ 350.00	3.6	\$ 1,260.00	Draft demand letter, research related to demand letter
109	1/21/2021	JN	\$ 350.00	0.2	\$70.00	Email with Defendant re: plaintiffs without any FLSA damages
110	2/11/2021	JN	\$ 350.00	0.6	\$210.00	Draft dismissal stipulation for plaintiffs that do not have damages
111	2/15/2021	JN	\$ 350.00	0.7	\$ 245.00	Draft Corp Rep Depo notice
112	2/16/2021	JN	\$ 350.00	0.1	\$35.00	Email with defendant regarding dismissal stipulation
113	2/17/2021	BSM	\$ 350.00	0.1	\$35.00	review need for turnback letters to clients who do not have FLSA claims
114	2/18/2021	JN	\$ 350.00	0.4	\$ 140.00	Review defendant's demand response
115	2/18/2021	JN	\$ 350.00	0.2	\$ 70.00	Settlement discussion emails with defendant
116	2/19/2021	JN	\$ 350.00	0.3	\$105.00	Review court's order denying dismissal
117	2/19/2021	BSM	\$ 350.00	0.1	\$35.00	review denial of dismissal stip
118	2/19/2021	BSM	\$ 350.00	0.5	\$175.00	discussed denial of dismissal with JN, research issue of partial dismissal in collective actions
119	2/26/2021	JN	\$ 350.00	0.1	\$ 35.00	Email with defendant regarding settlement discussions

Entry #	Date	Billor	Rate	Time	Amount	Description
120	3/3/2021	JN	\$ 350.00	2.2	\$770.00	Research Wva cases on FLSA settlement approval, draft motion and memo in support of dismissing non damage plaintiffs
121	3/4/2021	JN	\$ 350.00	0.3	\$ 105.00	Email with defendant regarding settlement, calculating net payments based on offer
122	3/12/2021	JN	\$ 350.00	0.1	\$ 35.00	Email with defendant regarding drafting of settlement agreement
123	3/17/2021	JN	\$ 350.00	0.2	\$70.00	Email with defendant re copy of motion to dismiss non damage plaintiffs
124	3/24/2021	JN	\$ 350.00	0.1	\$ 35.00	Email with [REDACTED]
125	3/25/2021	JN	\$ 350.00	0.2	\$ 70.00	Email to Defendant re ideas on structuring settlement
126	3/31/2021	JN	\$ 350.00	3.4	\$ 1,190.00	Revise settlement agreement provided by Defendant
127	3/31/2021	BSM	\$ 350.00	1	\$ 350.00	review/revise settlement agreement
128	4/5/2021	JN	\$ 350.00	0.1	\$ 35.00	Email with defendant regarding tax distribution plan for settlement
129	4/8/2021	JN	\$ 350.00	0.4	\$ 140.00	Review and approve final settlement agreement
130	4/9/2021	JN	\$ 350.00	4	\$ 1,400.00	Revise motion to approve settlement
131	6/25/2021	JN	\$ 350.00	0.4	\$140.00	Review order from Court re additional information needed on fees
132	6/28/2021	JN	\$ 350.00	1.3	\$455.00	Draft declaration in support of settlement approval, review fee report

Totals

135.75 \$ 42,967.50